A

Fatric Sdn Bhd v Hassan bin Abd Hamid & Ors

B HIGH COURT (JOHOR BAHRU) — SUIT NO JA-22NCVC-241–12 OF 2016
MOHD IVAN JC
8 APRIL 2018

C *Civil Procedure — Res judicata — Previous proceedings discontinued by plaintiff — Whether issue of res judicata arisen due to earlier suit filed by plaintiff against defendants for similar claim*

D *Limitation — Accrual of cause of action — Acknowledgment of debt by defendant — Revival of cause of action — Plaintiff filed action against defendants claiming for debt under invoices — Whether action statute-barred — Whether letter by defendant rendered fresh accrual of cause of action — Limitation Act 1953 s 26(2)*

E

The plaintiff had filed the present action against the defendants to claim the sum of RM1,441,386.93 in respect of the supply of frozen meat to the defendants based on a series of invoices dated from 2 May–30 October 2008. The two main issues in the present case were that of res judicata and limitation.
F The issue of res judicata arisen due to an earlier suit filed in the Shah Alam High Court ('the Shah Alam Suit') by the plaintiff against the defendants for the same claim herein. The defendants then filed an application for the Shah Alam Suit to be transferred to Johor Bahru, which had resulted in the plaintiff
G discontinuing the same and filing afresh the suit herein. In respect of the issue of limitation, the question for court's determination was whether the letter dated 5 September 2016 was within the ambit of s 26 of the Limitation Act 1953 ('the Act') to render a fresh accrual of the cause of action.

H **Held**, allowing the plaintiff's claim with costs of RM10,000 subject to allocator:

(1) Based on the evidence, the plaintiff had proven on a balance of probabilities that the plaintiff had been supplying frozen meat to the defendants for the amount as claimed, more so as the invoices had not
I been challenged (see para 47).

(2) There was no question of the present suit being res judicata arising out of the filing and subsequent discontinuance of the Shah Alam Suit, as the

merits of the case had never been ventilated in order to be binding on the plaintiff in respect of the filing afresh of the present suit (see paras 13–15 & 48).

(3) While the plaintiff's claim may had been statute-barred, the letter dated 5 September 2016 signed by the second defendant had operated as an acknowledgement of debt vis a vis all the defendants herein and had revived the cause of action in the manner envisaged by the provisions of s 26(2) of the Act (see paras 33 & 49).

[Bahasa Malaysia summary

Plaintif telah memfailkan tindakan ini terhadap defendan-defendan untuk menuntut wang sejumlah RM1,441,386.93 berkaitan pembekalan daging beku kepada defendan-defendan berdasarkan siri invois bertarikh dari 2 Mei–30 Oktober 2008. Dua isu utama dalam kes ini adalah bahawa res judicata dan had limit. Isu res judicata berbangkit akibat daripada tindakan terdahulu yang difailkan di Mahkamah Tinggi Shah Alam ('tindakan Shah Alam') oleh plaintif terhadap defendan-defendan bagi tuntutan yang sama di sini. Defendan-defendan kemudiannya memfailkan permohonan untuk tindakan Shah Alam dipindahkan ke Johor Bahru, yang mana menyebabkan plaintif tidak meneruskannya dan memfailkan tindakan baru di sini. Berkaitan isu had masa, soalan untuk penentuan mahkamah adalah sama ada surat bertarikh 5 September 2016 adalah dalam skop s 26 Akta Had Masa 1953 ('Akta') untuk menyebabkan kausa tindakan terakru baru.

Diputuskan, membenarkan tuntutan plaintif dengan kos sebanyak RM10,000 tertakluk kepada alukator:

(1) Berdasarkan keterangan, plaintif telah membuktikan atas imbangan kebarangkalian bahawa plaintif telah membekalkan daging beku kepada defendan-defendan untuk jumlah yang dituntut, lebih lagi kerana invois-invois tidak dicabar (lihat perenggan 47).

(2) Tidak terdapat persoalan bahawa tindakan ini adalah res judicata berbangkit daripada pemfailan dan penghentian berikutnya Tindakan Shah Alamt, kerana merit kes tidak pernah disuarakan supaya mengikat plaintif berkaitan pemfailan baru tindakan ini (lihat perenggan 13–15 & 48).

(3) Sementara tuntutan plaintif mungkin dihalang masa, surat bertarikh 5 September 2016 yang ditandatangani oleh defendan kedua telah beroperasi sebagai penerimaan hutang vis a vis kesemua defendan di sini dan telah membangkitkan semula kausa tindakan dalam cara yang ditetapkan oleh peruntukan s 26(2) Akta (lihat perenggan 33 & 49).]

Notes

For a case on previous proceedings discontinued by plaintiff, see 2(5) *Mallal's Digest* (5th Ed, 2017 Reissue) para 8461.

For cases on acknowledgment of debt by defendant, see 9 *Mallal's Digest* (5th Ed, 2018 Reissue) paras 2313–2317.

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189, SC (refd)

Credit Corporation (M) Sdn Bhd v Fong Tak Sin [1991] 1 MLJ 409, SC (refd)

Hu Chang Pee v Tan Sri Datuk Paduka (Dr) Ting Pek Khiing [1999] 3 MLJ 402, HC (refd)

Malayan Banking Bhd v Wembley Industries Holdings Bhd [2012] MLJU 91; [2012] 5 CLJ 956, HC (refd)

Residence Hotels and Resorts Sdn Bhd v Seri Pacific Corp Sdn Bhd [2016] 2 MLJ 640, CA (refd)

Vengadasalam v Khor Soon Weng & Ors [1985] 2 MLJ 449,SC (refd)

Legislation referred to

Limitation Act 1953 ss 6, 26, 26(2)

Limitation Ordinance (Cap 49) s 19, 19(1)

Mohd Fairuz bin Mahmood (Mohd Akhir & Partners) for the plaintiff.
Douglas Yee (Douglas Yee) for the defendants.

Mohd Ivan JC:

[1] In this case of a debt claim under invoices, the two issues central to this case were that of res judicata and limitation.

[2] The case had proceeded to trial, and to better evaluate the evidence adduced during trial, it is important to be guided by the pleadings in order to understand the nature of the case.

[3] The plaintiff's claims against the defendants were for a series of invoices dating from 2 May–30 October 2008 totalling RM1,441,386.93 in respect of the supply of frozen meat to the defendants.

[4] In para 6 of the statement of claim, it was pleaded as follows:

> Pada semua masa yang material, Defendan Pertama, Defendan Kedua, Defendan Ketiga dan Defendan Keempat ('Defendan-Defendan tersebut') merupakan pemilik-pemilik dan rakan-rakan kongsi, atau mengemukakan diri mereka sebagai pemilik-pemilik dan rakan-rakan kongsi bagi sebuah perniagaan yang bernama Syarikat Bersaudara (No Pendaftaran Perniagaan: JM0057045-T), dengan alamat

perniagaannya di Gerai Daging Kambing No J1, J2, J4 & J6, Pasar Sri Tebrau, 80050 Johor Bahru, Johor dan/atau 45, Jalan Permas 9/12, Bandar Baru Permas Jaya, 81750 Masai, Johor ('Perniagaan tersebut'). A

[5] The defendants did not wholly deny this, whereby paras 7 and 8 of the defence had been worded as follows: B

Defendan Pertama, Kedua, Ketiga dan Keempat mengakui sebahagian daripada pengataan di dalam para 6 Penyataan Tuntutan Plaintif.

Defendan Pertama, Kedua, Ketiga dan Keempat menegaskan bahawa Syarikat Bersaudara (No. Pendaftaran: JM0057045-T) telah luput dari pendaftaran Pendaftar Perniagaan pada 4 September, 2008. C

[6] The plaintiff had pleaded in para 7 of the statement of claim that the plaintiff had supplied various frozen meat to the defendants at their request at the material times which the defendants had received, which the defendants did not deny at para 9 of the defence, save that it was '... tertakluk kepada syarat-syarat yang diperuntukan di dalam undang-undang sedia ada dan terpakai masa ini'. D

E

[7] Again, at para 9 of the statement of claim where the plaintiff had stated the amount owing by Sykt Bersaudara to the plaintiff to be RM1,441,386.93 as per invoices listed in 'Lampiran A' annexed to the statement of claim, the defendants had responded at para 12 of the defence as follows: F

Defendan Pertama, Kedua, Ketiga dan Keempat mengakui para 9 Penyataan Tuntutan, tertakluk kepada syarat-syarat yang diperuntukan di dalam undang-undang sedia ada dan terpakai masa ini.

[8] The res judicata issue had arisen due to an earlier suit filed in the Shah Alam High Court under Writ of Summons No BA-22NCVC-466–08 of 2016 ('the Shah Alam Suit') by the plaintiff against the defendants for the same claim herein. G

[9] Thedefendants had then filed an application on 20 October 2016 for the Shah Alam Suit to be transferred to Johor Bahru, which had resulted in the plaintiff discontinuing the same on the 16 November 2016 and filing afresh the suit herein. H

[10] The law on res judicata can begleaned from the Supreme Court decision in the case of *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189, where it was expounded as follows: I

What is res judicata? It simply means a matter adjudged, and its significance lies in its effect of creating an *estoppel per rem judicatum*. When a matter between two

parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the res judicata, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; res judicata pro veritateaccipitur. The public policy of the law is that, it is in the public interest that there should be finality in litigation — *interest rei publicaeut sit finis litium*. It is only just that no one ought to be vexed twice for the same cause of action — *nemo debetbisvexari pro eadem causa*. Both maxims are the rationales for the doctrine of res judicata, but the earlier maxim has the further elevated status of a question of public policy.

Since a res judicata creates an *estoppel per rem judicatum*, the doctrine of res judicata is really the doctrine of *estoppel per rem judicatum*, the latter being described sometimes in a rather archaic way as estoppel by record. Since the two doctrines are the same, it is no longer of any practical importance to say the res judicata is a rule of procedure and that an *estoppel per rem judicatum* is that of evidence. Such dichotomy is apt to give rise to confusion.

The starting point ought to be the celebrated passage by Wigram VC in the case of *Henderson v Henderson* (1843) 3 Hare 100 at p 115 which is:

> The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time.

...

Thus, there are in fact two kinds of *estoppel per rem judicatum*. The first type relates to cause of action estoppel and the second, to issue estoppel, which is a development from the first type.

The cause of action estoppel arises when rights or liabilities involving a particular right to take a particular action in court for a particular remedy are determined in a final judgment and such right of action, ie the cause of action, merges into the said final judgment; in layman's language, the cause of action has turned into the said final judgment. The said cause of action may not be relitigated between the same parties because it is res judicata.

In order to prevent multiplicity of action and also in order to protect the underlying rationales of *estoppel per rem judicatum* and not to act against them, such estoppel of cause of action has been extended to all other causes of action (based on the same facts or issues) which should have been litigated or asserted in the original earlier action resulting in the final judgment, and which were not, either deliberately or due to inadvertence.

[11] Essentially, there must have been adjudication on the merits of a case which binds the parties thereto and can be set up as a bar to prevent the filing of a fresh action to litigate the same issues again, or whatever issues which could, or should, have been brought within that earlier suit.

[12] This will give an air of finality, where no further action may be brought even on the pretext that it had not been ventilated in the earlier suit, if it could rightly have been included as part of the earlier suit. A

[13] The proceedings in the Shah Alam Suit would quite clearly show that it was discontinued at an early stage when an application had been filed for transfer of the case to Johor Bahru High Court. B

[14] This application for transfer of the Shah Alam Suit to the Johor Bahru High Court would not, whether directly or indirectly, have opened up the merits of the case for any form of adjudication. At best that afull argument of thetransfer application would have resulted would be a decision for either the Shah Alam High Court or the Johor Bahru High Court to be tasked to hear the case. C

D

[15] At that stage of the proceedings, there was little or no likelihood of any adjudication on the merits in the Shah Alam Suit, which would now support the plea of res judicata in respect of the filing of the suit herein.

[16] Even during the course of the trial in this action, evidence had not been led that the merits of the case had been addressed in the Shah Alam Suit. E

[17] This position can be confirmed by the authority in the case of *Residence Hotels and Resorts Sdn Bhd v Seri Pacific Corp Sdn Bhd* [2016] 2 MLJ 640 where it was reported as follows: F

> res judicata is a substantive rule of law. It means a decision on the 'merits' which disposes once and for all of the matters decided and the same becomes the truth between the parties, so that, except on appeal or other exceptional circumstances such as fraud, it cannot be relitigated between persons bound by the judgment. The doctrine of res judicata has developed over the years to extend to issue estoppel as well, the requirements of which are: (i) that the same question has been decided; (ii) that the judicial decision which is said to create the estoppel was final; and (iii) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised. We are also mindful of the fact that it must be shown that the earlier judgment necessarily and with precision determined the point in issues to constitute res judicata; G H
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> See:
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> (i) *Hoystead v Taxation Commissioner* [1926] AC 155 I
>
> (ii) *Carl Zeiss Stiftung v Rayner & Keeler Ltd &Ors* [1966] 2 All ER 536 @ p 565
>
> (iii) *Tong Lee Hwa & Anor v Lee Yoke San* [1976] MLJ 24 (FC)

A (iv) *Asia Commercial Finance (M) Berhad v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189 (SC)

B **[18]** Merging gracefully now into the issue of limitation, it is to be noted that the plaintiff's invoices to the defendants had all been dated in 2008, which invoices had been listed in 'Lampiran A' annexed to the statement of claim, thus leaving no doubt as to the particulars of the plaintiff's claims.

C **[19]** If this had been the exact same mode of presentation of the plaintiff's claim in the Shah Alam Suit, the plaintiff's claim would clearly be caught by s 6 of the Limitation Act 1953 and be statute-barred, whether it was heard before the Shah Alam High Court or the Johor Bahru High Court herein.

D **[20]** However, in the period leading up to the discontinuation of the Shah Alam Suit and the filing of the Johor Bahru High Court Suit herein, something had happened in the intervening period, which had dramatically altered the status quo somewhat.

[21] This was pleaded at paras 16 and 17 of the statement of claim as follows:

E 16. Pada 5.9.2016, Defendant Kedua telah menghadiri satu mesyuarat di pejabat peguamcara Plaintif.

17. Dalam mesyuarat tersebut, Defendant Kedua telah bagi sendirinya, dan juga mewakili Defendan Pertama, Defendan Kedua, Defendan Ketiga dan Defendan Keempat membuat satu akuan terima hutang (acknowledgement of debt) terhadap F jumlah keberhutangan tersebut sebanyak RM 1,441,386.93 kepada Plaintif ('Akuan Terima').

[22] This was addressed in the defence under paras 19 and 20 therein as follows:

G 19. Defendant Kedua mengakui para 16 Penyataan Tuntutan.

17. Sebagai jawapan kepada para 17 Penyataan Tuntutan, Defendan Pertama, Kedua, Ketiga dan Keempat menegaskan bahawa surat bertarikh 5 September 2016 yang ditandatangani oleh Defendant dengan bersaksikan Peguamcara Plaintif H bernama Lim Pit Feng tidak boleh ditafsirkan sebagai suatu terima hutang (acknowledgement of debt) dari Defendan Pertama, Kedua, Ketiga dan Keempat, selain ianya tidak boleh dikuatkuasakan di dalam perkara tindakan ini.

I **[23]** For added clarity, the contents of that letter dated 5 September 2016 was by Sykt Bersaudara at its Bandar Permas Jaya address to the plaintiff are set out below:

Tuan,

PER : MAHKAMAH TINGGI SHAH ALAM GUAMAN NO

BA-22NCVC-466-08/2016 (FATRIC SDN BHD v HASSAN BIN ABD HAMID & 3 ORS) A

PER : SURAT RAYUAN BAGI PENGECUALIAN BAYAR RM1,441,386.93

Saya merujuk kepada perkara di atas di mana saya merupakan rakan kongsi Syarikat Bersuadara. Saya juga mewakilirakan-rakan kongsi lain Syarikat Bersaudara dalam menulis surat ini. Saya selanjutnya merujuk kepada mesyuarat yang saya (sebagai wakil Syarikat Bersaudara) adakan dengan wakil anda (Cik GS Yap & Encik TP Yap) pada 05.09.2016. B

Saya mengatakan behawa walaupun kami mengakui bahawa Syarikat Bersaudara sememangnya berhutang kepada Fatric Sdn Bhd sebanyak RM1,441,386.93 seperti yang dalam tindakan di atas, saya mengatakan bahawa saya dan rakan-rakan kongsi yang lain sememangnya tidak mempunyai sebarang dana atau pendapatan untuk membayar balik jumlah keberhutangan tersebut. C

Kami dengan rendah hati meminta jasa baik kami untuk melucutkan tindakan ini terhadap Syarikat Bersaudara dan/ atau mengecualikan kami daripada membuat bayaran terhadap keberhutangan tersebut. D

Sekian.

Yang Benar, E

Signed	Disaksikan,
Sh Mohmad Nasir Bin Shak Imam	signed
(IC number)	LIM PIT Feng
	(IC number)

F

[24] The testimony of Sh Mohmad Nasir bin Shak Imam (the second defendant), who had signed the letter, did not deny having signed the letter. The relevant portion of his witness statement was as follows:

Q. Dengan merujuk kepada m/s 90 Ikatan Dokumen Bersama; adakah tuan menandatangani dokumen itu? G

A. Ya benar, saya menandatangani dokumen itu.

[25] The events which had led to second defendant attending the office of the plaintiff's solicitors had been set out in question/answer No 22 of the witness statement of second defendant as follows: H

Jelaskan kepada Mahkamah yang Mulia ini kenapa tuan menandatangani dokumen itu dengan mengakui bahawa tuan mewakili Tiga (3) pemilik-pemilik/rakan kongsi-rakan kongsi lain di dalam Syarikat Bersaudara menulis surat rayuan itu? I

(a) Saya hadir ke pejabat peguam Plaintiff pada 5 September 2016 selepas menghadiri Mahkamah Tinggi Shah Alam untuk satu (1) kes lain mengikut seorang lagi saudara saya bernama Shak Daud untuk satu (1) kes lain yang difailkan oleh Plaintiff terhadap saudara saya itu dan saya.

(b) Saya tak ingat no kes yang melibatkan Plaintiff dengan saudara saya itu dan saya.

(c) Saya dan saudara saya bernama Shak Daud hadir ke pejabat Peguam atas permintaan Peguamcara Plaintif.

(d) Melalui perbualan itu; saya dan saudara saya diminta hadir ke pejabat Peguam untuk tulis surat rayuan atas hutang saya dan saudara saya iaitu dengan Plaintiff.

(e) Saya adalah seorang buta huruf; saya tak pandai membaca dan mengeja.

[26] To subject this written testimony to some basic evaluation would not be difficult. These were not matters which had been put to second defendant during trial which he had to answer on the spot. The witness statement was prepared by his solicitors in advance. There should have been sufficient time to trace back which case it was that second defendant was referring to, or even to ask the plaintiff's solicitors, for that matter. Surely the second defendant would have possessed some documents which had necessitated his attendance in the Shah Alam High Court for that other case.

[27] That relative of the second defendant named Shak Daud was never called as a witness during trial, if it was of importance to the second defendant or the other defendants to disown that document.

[28] The contents of the letter leave little doubt as to its purpose and what it was intended to accomplish. Both the defence and the witness statement of the second defendant, being the one who signed that letter of admission, did not deny the signing of the letter or to challenge the circumstances as to the signing of that letter.

[29] There was also no counterclaim by the defendants applying to set aside the acknowledgement of debt having been procured by fraud, misrepresentation, *non est factum*, undue influence, coercion and/or any of the other usual complaints.

[30] It must be observed that there could easily have been a striking out application filed in the Shah Alam Suit premised on the action being statute-barred, instead of an application for transfer of the case to Johor Bahru. The effort would be more or less the same and would have hit the nail squarely on the head.

[31] If it was true that the defendants had claimed that they had never operated in Bandar Baru Permas Jaya, and that their stall at Sri Tebrau had ceased to operate since 4 September 2008 (which does actually encompass the dates the plaintiff's invoices were issued), there would have been no reason for

second defendant to attend the plaintiff's solicitors' office, much less agree to sign any letter of appeal not only for his relative's case but also for his own debts (details of which were not provided). A

[32] Essentially, the contents of the invoices as listed in *Lampiran* A of the statement of claim and whether to items therein had been delivered to or received by the defendants were also not challenged during the trial. B

[33] As such, there was inadequate challenge against the purport and ambit of the letter dated 5 September 2016, which I find sufficient as an acknowledgement or admission of the debt. C

[34] The question now is whether the letter dated 5 September 2016, which was a Part B document (not dispute as to its existence but challenged as to its contents), had come within the ambit of s 26(2) of the Limitation Act 1953 to render a fresh accrual of the cause of action. D

[35] This admission contained in the letter dated 5 September 2016 had come in after the limitation period of six years had expired, and I had questioned whether it would be operative for the cause of action to be restarted from the date of the admission. E

[36] Section 26 of the Limitation Act 1953 is reproduced in full as follows: F

> 26 Fresh accrual of action on acknowledgment or part payment
>
> (1) Where there has accrued any right of action to recover land or to enforce a mortgage or charge in respect of land or personal property, and —
>
> (a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or G
>
> (b) in the case of any such action by a mortgagee or chargee the person in possession as aforesaid or the person liable for the debt secured by the mortgage or charge makes any payment in respect thereof, whether principal or interest,
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> the right shall be deemed to have accrued on and not before the date of the acknowledgment or last payment. H
>
> (2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment: I
>
> Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder of the rent or interest then due, but any payment of interest shall have effect, for the purposes of this subsection only, as

if it were a payment in respect of the principal debt.

[37] The question of whether a cause of action which is already dead can be revived is particularly relevant when viewed in the context of the Limitation Ordinance of Sarawak or Sabah, where any restart of a fresh limitation period can only be donebefore the relevant limitation period had expired.

[38] In the Limitation Ordinance of Sarawak, the provision on restarting the limitation period for a particular cause of action is provided under s 19 which is reproduced as follows:

> 19(1) If, before the expiration of the period prescribed for a suit in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.
>
> (2) When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.
>
> Explanation 1 — For the purpose of this section, an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.
>
> Explanation 2 — In this section 'signed' means signed either personally or by an agent duly authorised in this behalf.

[39] This provision had been canvassed in the case of *Hu Chang Pee v Tan Sri Datuk Paduka (Dr) Ting Pek Khiing* [1999] 3 MLJ 402, where s 19 of the Sarawak Limitation Ordinance was in issue, in particular the provisions under s 19(1). There, Hasan Lah J (as he then was) had stated as follows:

> Under such circumstances, I am of the view that the plaintiff's claim is time-barred under item 43 of the schedule and I agree with the learned counsel for the defendant that the acknowledgement made by the defendant's solicitor on 22 December 1995 could not revive the plaintiff's claim as it did not comply with the requirement of s 19 of the Limitation Ordinance that it must be made before the expiration of the period prescribed for the suit.

[40] This was based on a plain reading and understanding of the provisions in s 19(1) of the Sarawak Limitation Ordinance, as being clear and unambiguous.

[41] The plaintiff had submitted that a plain reading of the Act must be taken, whereas the defendants' counsel had invited a more lateral reading to be taken.

[42] In the case of *Vengadasalam v Khor Soon Weng & Ors* [1985] 2 MLJ 449, the Supreme Court had ruled that a court could not read words into an Act of Parliament when it said:

> It would appear to us that the learned Judge has in fact by his determination in this matter purported to inject policy considerations in his construction of the requisite provisions of the Act in the face of its textual connotation. This would be taking statutory construction beyond its permissible limits, and we would refer to what has been said in this regard in *Merdeka University Berhad v Government of Malaysia* [1981] 2 MLJ 356 (at p 358). Mr Shanmugaiah for the respondents in answer to a question we put to him agrees that the learned judge has by construction extended the ambit of the provisions of s 9(b) of the Act but adds 'by necessary implication', as he puts it. The provisions of s 9(b) of the Act ex facie and more particularly when read in contrast with those of para (a) of that section clearly point to a postulate for a purposive and literal construction, and we would refer in relation to this to what has been said by this court in its very recent judgment in *Foe Loke Ying & Anor v Television Broadcasts Ltd & 2 Ors* [1985] 2 MLJ 35.
>
> We can see no justification for extending the ambit of s 9(b) of the Act and any exercitation purporting to fill in textual details in a statute on policy considerations would be, to reiterate what was said in *Foo Loke Ying*, no less than an unwarranted judicial transgression into the legislative arena and an attempt to obturate a statutory hiatus (if indeed there is any but we see none in any event in this case) which is not a curial function. We would in this regard also advert to the decision of the House of Lords in *Thompson v Goold & Co* [1910] AC 409, 420 where Lord Mersey said in his speech (at p 420): 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do'. Even more pertinent perhaps would be the speech of Lord Loreburn, LC, in *Vickers, Sons and Maxim, Limited v Evans* [1910] AC 444, 445 when he said (at p 445):
>
> > My Lords, this appeal may serve to remind us of a truth sometimes forgotten, that this House sitting judicially does not sit for the purpose of hearing appeals against Acts of Parliament, or of providing by judicial construction what ought to be in an Act, but simply of construing what the Act says. We are considering here not what the Act ought to have said, but what it does say; ...
> >
> > The appellant's contention involves reading words into this clause. The clause does not contain them; and we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

[43] The defendants had relied on the case of *Credit Corporation (M) Sdn Bhd v Fong Tak Sin* [1991] 1 MLJ 409, which had focused on s 29 of the Limitation Act 1953 and does not shed further light on the issue.

[44] Section 26(2) of the Limitation Act 1953 had not included words found in s 19(1) of the Sarawak Limitation Ordinance, whereby such missing words cannot be read into s 26(2). Parliament would have added those words if it had been intended that the operation of s 26(2) was to follow that under s 19(1).

[45] There are also no decided cases or authorities to suggest that a broader interpretation of s 26(2) may be permissible or justified.

[46] In the case of *Malayan Banking Bhd v Wembley Industries Holdings Bhd* [2012] MLJU 91; [2012] 5 CLJ 956, it was held that an unequivocal admission of acknowledgement of debt would fall within the ambit of s 26(2) of the Limitation Act 1953.

[47] As a whole, I would conclude that from the trial evidence, the plaintiff had proven on a balance of probabilities that the plaintiff had been supplying frozen meat to the defendants for the amount as claimed, more so as the invoices had not been challenged.

[48] There is also no question of this case being res judicata arising out of the filing and subsequent discontinuance of the Shah Alam Suit, as the merits of the case had never been ventilated in order to be binding on the plaintiff in respect of the filing afresh of this case.

[49] While the plaintiff's claim may have been statute-barred, the letter dated 5 September 2016 signed by the second defendant had operated as an acknowledgement of debt vis a vis all the defendants herein, and had revived the cause of action in the manner envisaged by the provisions of s 26(2) of the Limitation Act 1953.

[50] I am therefore allowing the plaintiff's claim in terms of prayers (a) and (b) of its statement of claim with costs under prayer (c) in the sum of RM10,000 subject to allocator.

Plaintiff's claim allowed with costs of RM10,000 subject to allocator.

Reported by Dzulqarnain Ab Fatar